

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TINO LOVE,)	
)	
Petitioner,)	
)	
v.)	Case No. 1:15CV708
)	
DAVID MITCHELL,)	
)	
Respondent.)	
)	

RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This matter is before the Court on Petitioner's Motion to Withdraw [Doc. #9], requesting that his pending Petition for Writ of Habeas Corpus [Doc. #1], be deemed withdrawn.

This action may be dismissed on Petitioner's request "by court order, on terms that the Court considers proper." Fed. R. Civ. P. 41(a)(2). In the circumstances presented, the Court finds that dismissal without prejudice is appropriate. Petitioner seeks to withdraw his Petition, noting that he is "not prepared to continue with the Motion at this time." (Motion [Doc. #9] at 1.) Respondent will not be prejudiced by allowing Petitioner to withdraw the pending Petition. Cf. Davis v. USX Corp., 819 F.2d 1270, 1273-74 (4th Cir. 1987) ("The purpose of Rule 41(a)(2) is freely to allow voluntary dismissals unless the parties will be unfairly prejudiced[.]" and "it is well established that, for purposes of Rule 41(a)(2), prejudice to the defendant does not result from the prospect of a second lawsuit."). Therefore, the Court will recommend that Petitioner's Motion to Withdraw be granted.

IT IS THEREFORE RECOMMENDED that Petitioner's Motion to Withdraw [Doc. #9] be GRANTED, that the Petition for Writ of Habeas Corpus [Doc. #1] be DISMISSED WITHOUT PREJUDICE, and that Respondent's Motion to Dismiss [Doc. #4] be DENIED AS MOOT.

This, the 4th day of March, 2016.

/s/ Joi Elizabeth Peake
United States Magistrate Judge